in favour of the other party. That equity was, however, subject to the qualifications (1) that the other party had altered his position; (2) that the promisor could resile from his promise on giving reasonable notice, which need not be a formal notice, giving the promisee a reasonable opportunity of resuming his position; and (3) the promise only became final and irrevocable if the promisee could not resume his position. Without reciting here the facts of the said Privy Council case, it is only necessary to reiterate that the said principle of promissory estoppel does not apply to our present case where there is no contractual relationship between the parties to the present suit (see *Morris* v. *Tarrant*[8]). On the issue raised in the pleadings as they stood, I therefore held that the plaintiff was entitled to possession of the said property and ordered the defendants to deliver possession thereof to the plaintiff within one month from the date of judgment on June 30, 1977. Since the plaintiff filed this suit on November 30, 1973, she has been suffering damages by reason of the wrongful occupation of the said property which she could have let out at $120 per month. I should have also awarded damages to her amounting to $5,160 for the period December 1973 to June 1977 inclusive, but as it was clear that there would in due course be a suit for specific performance by the 2nd defendant and his brother, as the administrators of the estate of the late S. Kathamuthu, against the plaintiff, I therefore thought it would be more appropriate to leave the issue of damages to be dealt with in any subsequent proceedings by the estate of the deceased. No question of damages for breach of the agreement for sale arises in this case, and apart from the order of possession, I only ordered costs against the defendants.

Order accordingly.

Solicitors: *Thillaimuthu & Phock Kin; Mathuram & Co.*

SINGMA SAWMILL CO. SDN. BHD. v. ASIAN HOLDINGS (INDUSTRIALISED BUILDINGS) SDN. BHD.; MALAYSIAN CO-OPERATIVE AGENCIES LTD., CLAIMANTS

[O.C.J. (Syed Othman J.) August 29, 1977]
[Johore Bahru — Distress Suit No. 1 of 1977]

Practice and Procedure — Distress — Machinery belonging to claimants found on defendants' premises — Machinery seized — Distress Ordinance, 1951, ss. 10 & 12(1).

Distress — Seizure of machinery belonging to claimants — Machinery on defendants' premises — Scope of ss. 10 & 12(1) of Distress Ordinance. 1951.

On January 30, 1977, on application by the plaintiffs, the court issued a distress warrant to distrain the movable property found on the defendants' premises together with a factory to recover $27,600 being nine months' rent due by the defendants. On February 8, 1977 the sheriff seized all movable property on the premises including the machinery. On February 17, 1977 the claimant filed a notice of objection claiming that the machinery belonged to them and requested that they be released within 3 days. The plaintiffs ignored the notice. On February 24, 1977 the sheriff issued a notice to the plaintiffs as to the claim by the claimants, and on February 28, 1977, he issued interpleader summons.

The plaintiffs conceded that the machinery belonged to the claimants but maintained that the machinery was still subject to seizure. The claimants stated that the machinery was leased to the defendants for a year. On expiry of the lease, the claimants found that it would cost them $20,000 to remove the machinery and decided to let it remain on the premises whilst looking for buyers or other persons willing to rent the machinery. The evidence showed that the machinery remained on the defendants' premises for 8 months after the expiry of the said lease.

Held: (1) by the proviso to section 10 of the Distress Ordinance 1951 the court was not required to release the distrained goods unless it was satisfied that the immediate tenant had no right of property and that the goods belonged to the claimant. Even if the court was satisfied with these two ingredients, it would not necessarily follow that the court must release the goods. The court could still order them to be distrained if they fell under any of the categories of goods listed in section 12;

(2) the circumstances required that the claimants, as owners, should have taken positive steps if not at the outset, at least after the expiry of the lease, to assert that the machinery belonged to them. Instead, they were largely responsible for representing that the defendants' assets lay with the machinery and for painting the defendants with the colour of ownership of the machinery.

Cases referred to:-

(1) *Challoner* v. *Robinson* [1907] 1 Ch. 51.

(2) *Re Couston, Ex. p. Watkins* (1873) 8 Ch. App. 520.

DISTRESS SUIT.

Y. Sivaloganathan (*T. Annathurai* with him) for the claimants.

Ong Ban Chai for the plaintiffs.

Cur. Adv. Vult.

Syed Othman J.: On January 30, 1977 on application by the plaintiffs, the court issued distress warrant to distrain the movable property found on the premises of the defendants in Johore Bahru together with a factory to recover $27,600 being 9 months' rent due by the defendants. On February 8, 1977 the sheriff seized all movable property on the premises including the machinery. On February 17, 1977 the claimants filed a notice of objection claiming that a list of machinery belonged to them and requested that they be released within 3 days. The plaintiffs ignored the notice. On February 24, 1977 the sheriff issued a notice to the plaintiffs as to the claim by the claimants, and on February 28, 1977 he issued an interpleader summons.

The issues agreed in the first instance for trial were (1) whether the goods are owned by the claimants, and (2) if so, whether the claimants are entitled to have the goods released.

At the hearing, on August 21, 1977 the plaintiffs' side conceded that the machinery belonged to the claimants, but maintained that the machinery was still subject to seizure. Issue (2) therefore remains to be determined.

The evidence as adduced by the general manager of the claimants in his affidavit of March 14, 1977 and in court shows that the claimants had purchased the machinery from Singapore; payment was completed on May 14, 1975; on June 15, 1975 they leased the machinery to the defendants for a year at $1,500 per month; on expiry of the lease the claimants found that it would cost them about $20,000 to remove the machinery to Kuala Lumpur and they decided to let it remain on the premises whilst looking for buyers or other persons willing to rent the machinery.

As far as I can see the issue has to be determined mainly on the construction of the provisions of the Distress Ordinance, 1951 and authorities relevant thereto.

I think section 8 of the Ordinance referred to by the plaintiffs' side has little bearing here. The section relates to property which is excluded from seizure. The machinery has in fact been seized.

The provisions of the Ordinance which I consider to be relevant are the proviso to section 10 and section 12(1). They have been the focus of arguments.

The main part of section 10 deals with an application by an under tenant, lodger or other person for discharge, suspension or release of the movable property under seizure. The proviso as it stands, I agree, makes heavy reading, but breaking it down for the purpose of this case, it reads: —

"Provided that no order shall be made unless such ... other person aforesaid satisfies the court that the immediate tenant has no right of property or beneficial interest in the goods or chattels and that such ... goods or chattels are the property ... of such ... other person aforesaid."

Section 12(1) reads: —

"12. The provision of section 10 shall not apply —

(1) to goods belonging to the husband or wife of the tenant whose rent is in arrear, or to goods comprised in any bill of settlement made by such tenant or to goods in the possession, order or disposition of such tenant by the consent and permission of the true owner under such circumstances that such tenant is the reputed owner thereof."

By the proviso to section 10, the court is required not to release the distrained goods unless it is satisfied that (1) the immediate tenant has no right of property, and (2) that the goods belong to the claimant. It will be observed that the enactment of these provisions is in the negative. This is so, I think, because even if the court is satisfied with these two ingredients, it does not necessarily follow that the court must release the goods. The court can still order them to be distrained if they fall under any of the categories of goods listed in section 12. It is unnecessary to set out the categories of goods in full, as the plaintiffs' side is merely urging that the machinery should be considered to fall under the category of goods specified in the last limb of subsection (1), i.e. goods in the possession of the tenant by the consent and permission of the true owner under such circumstances that the tenant is the reputed owner.

Both sides in argument referred to two authorities.

In *Challoner* v. *Robinson*[1] the facts of the case briefly are: The plaintiff, proprietor of an Arts Club, was tenant of the premises as underlessee. He undertook all liabilities of the club and received all profits. The club was managed by a committee of which the plaintiff was a member. Only members or associates of the club could send pictures for exhibition where sale of the pictures was not opened to the public but to persons introduced by members or invited. It was held in the first instance and then on appeal that the pictures were liable to distress.

In *Re Couston, Ex. p. Watkins*[2] Lord Selbourne L.C. discussed at length "reputed owner". (This expression appears in section 12(1) of the Ordinance). He said at pages 528-9: —

"... The doctrine of reputed ownership does not require any investigation into the actual state of knowledge or belief, either of all creditors, or of particular creditors, and still less of the outside world, who are no creditors at all, as to the position of particular goods. It is enough for the doctrine if these goods are in such a situation as to convey to the minds of those who know their situation the reputation of ownership, that reputation arising by the legitimate exercise of reason and judgment on the knowledge of those facts which are capable of being generally known to those who choose to make inquiry on the subject. It is not at all necessary to examine into the degree of actual knowledge which is possessed, but the court must judge from the situation of the goods what inference as to the ownership might be legitimately drawn by those who know the facts. I do not mean the facts that are only known to the parties dealing with the goods, but such facts as are capable of being, and naturally would be, the subject of general knowledge to those who take any means to inform themselves on the subject. So, on the other hand, it is not at all necessary, in order to exclude the doctrine of reputed ownership, to shew that every creditor, or any particular creditors, or the outside world who are not creditors, know anything whatever about particular goods, one way or the other. It is quite enough, in my judgment, if the situation of the goods was such as to exclude all legitimate ground from which those who knew anything about the situation could infer the ownership to be in the person having actual possession."

In the present case, the tenant continued to have possession of the machinery after the expiry of the short term lease to the extent of 8 months. I am unable to accept the explanation of the general manager of the claimants that the reason for this was that it would have cost the claimants $20,000 to move the machinery to Kuala Lumpur. According to the purchase documents the cost of machinery at the time of purchase was $103,053.13 which appears to include cost of delivery. I have the feeling that the real reason was that there was some strong business connection between the defendants and the claimants. The evidence shows that the managing director of the defendants and the claimants was one and the same person. He signed the tenancy agreement on behalf of the defendants with the plaintiffs on March 18, 1975 and he also signed on behalf of the claimants (with another director) the lease of the machinery with the defendants on June 15, 1975. On the evidence that the defendants rented the premises for the purpose of running a factory, it is reasonable for any person to believe that all the machinery and equipment put into the premises would belong to the defendants; more so when the machinery remained in the factory for about 8 months after expiry of the lease that is claimed to have been entered into. The circumstances require that the claimants, as owners, should have taken positive steps if not at the outset, at least after the expiry of the lease, to assert that the machinery belonged to them, as they knew or should have known that the defendants were running a factory in rented premises with apparently no real assets. In the circumstances, I find that the claimants have been largely responsible for representing that the defendants' assets lay with the machinery and for painting the defendants with the colour of ownership of the machinery.

Objection dismissed with costs.

Objection dismissed.

Solicitors: *S.M. Ratnam & Co.; Ong Ban Chai & Co.*